

PAROLE VIOLATION

Proposed Regulation Text

§ 4977. Protections Afforded a ~~Ward~~Parolee/Parole Violator in Parole Violation Matters

~~A parolee who is scheduled for a probable cause, detention, violation, or disposition hearing shall be afforded the following rights:~~

~~(a) Notice of date, time, and place of hearing at least five days in advance of the hearing.~~

~~(b) Notice of the alleged parole violations and the evidence relied upon in support of the allegations.~~

~~(c) To receive a copy of any police, arrest, and crime reports which are in the possession of the Department pertaining to such proceedings. Portions of such reports containing confidential information need not be disclosed if the parolee or his attorney has been notified that confidential information has not been disclosed to them.~~

~~(d) To ask for the assistance of counsel and to receive counsel when he meets the established criteria.~~

~~(e) To appear in person and speak in his own behalf~~

~~(f) To bring letters and documents to the hearing and to request the presence of individuals who can give relevant information in his behalf.~~

~~(g) To request that persons appear who have given adverse information so they may be questioned in his presence.~~

~~(h) To ask for a postponement if new evidence is presented at the hearing and he needs time to prepare a response.~~

~~(i) To have the facts established and a detention or revocation decision made by an independent party not associated with the recommendation. The Board assumes the responsibility for such decision making.~~

~~(j) To receive a written summary of a hearing where facts were established or where detention or revocation of parole was ordered. The summary shall include the evidence relied upon where probable cause or violation of parole is established at the hearing. When detention or revocation of parole is ordered, the reasons for such action shall be included in the summary.~~

(a) The Juvenile Parole Board shall appoint counsel to represent each and every Juvenile Parolee in the Revocation and Revocation Extension processes.

(b) Parolees/parole violators detained in custody will have the following rights in revocation and revocation extension proceedings:

1. To receive written notice of the rights outlined herein. For parole revocation cases, this notice of rights must be served on the parolee within three (3) business days after the parole hold.
2. To receive written notice of the charges against him or her. For parole revocation cases, this notice of charges must be served on the parolee within three (3) business days after the parole hold.
3. To receive a copy of all evidence that will be used against the parole violator unless it is deemed confidential.
4. An attorney to represent the parolee/parole violator during the Revocation and Revocation Extension process in accordance with Section 4979. A parolee/parole violator has the right to retain a private attorney or to be represented by his/her public defender.
5. A Probable Cause Hearing.
 - a. In the revocation process this shall occur within **thirteen (13)** business days following the parole hold.
 - b. In the revocation extension process this shall occur within **thirteen (13)** business days following service of the notice of rights to the parole violator.
 - c. The parolee or parole violator has the right to request an expedited Probable Cause Hearing if there is evidence that shows he or she is completely innocent of the charges.
6. If the charges are not resolved at the Probable Cause Hearing, the parolee/parole violator will have a right to a Revocation or Revocation Extension Hearing. Revocation **Hearings** shall take place within 35 calendar days following a parole hold. Revocation Extension **Hearings** shall take place within 35 calendar days following the notice of rights to the parole violator. He/she shall have the right to receive notice of the date and time of the hearing.
7. To be heard in person and to present witnesses and documentary evidence in his/her defense at a Revocation or Revocation Extension Hearing.
 - a. For Parole Revocation Hearings, the parolee shall have the right to subpoena witnesses and present evidence to the same extent and on the same terms as the Division of Juvenile Justice, including the right to question live witnesses through his/her attorney.
 - b. For Revocation Extension Hearings, the right to call witnesses and present documentary evidence is limited by institutional safety and correctional goals.
8. To accommodations and assistance sufficient to ensure equal access to and effective communication during the revocation/revocation extension process as outlined below.
9. To a neutral and detached hearing officer.
10. To a written decision by the hearing officer addressing the evidence relied on and the reasons for the decision.
11. To receive an audible audio recording of the Revocation or Revocation Extension Hearing within ten (10) business days from the date the JPB receives a written request for the recording.

12. To file an appeal with the assistance of an attorney within **twenty (20)** business days of receipt of the written hearing decision.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1719 and 1723, Welfare and Institutions Code.

§ 4977.5. Not-In-Custody Hearings

- a. A parolee who is not detained in custody on a DJJ parole hold while undergoing Revocation proceedings is considered to have Not-In-Custody status.
- b. A parolee charged with a violation of parole who is in Not-In-Custody status has the following rights:
- (1) To receive written notice of the rights outlined herein within ten (10) business days after parole discovers the behavior.
 - (2) To receive written notice of the charges against him or her within ten (10) business days after parole discovers the behavior.
 - (3) To receive a copy of all evidence that will be used against the parolee unless it is deemed confidential.
 - (4) An attorney to represent the youth during the revocation process in accordance with Section 4979. A parolee has the right to retain a private attorney or to be represented by his/her public defender.
 - (5) A Revocation Hearing that shall take place within **sixty (60)** calendar days after the parolee has been served with the notice of rights and charges.
 - (6) To be heard in person and to present witnesses and documentary evidence in his/her defense at the Revocation Hearing.
 - (7) To accommodations and assistance sufficient to ensure equal access to and effective communication during the revocation/revocation extension process as outlined below.
 - (8) To a neutral and detached hearing officer.
 - (9) To a written decision by the hearing officer addressing the evidence relied upon and the reasons for the decision.
 - (10) To receive an audible audio recording of the Revocation Hearing within ten (10) business days of JPB's receipt of a written request.
 - (11) To file an appeal with the assistance of an attorney within **twenty (20)** business days of receipt of the written hearing decision."
- c. A parolee charged with a violation of parole who is in "Not-In-Custody" status does not have the right to a Probable Cause Hearing.

Note: Authority cited: Sections 1004, 1001, 1712, , Welfare and Institutions Code. Reference: Sections 1714 and 1719, 1723 Welfare and Institutions Code.

§ 4977.6 Accommodations and Assistance For Parolees/Parole Violators with Disabilities and/or Effective Communication Needs.

- a. Parolees and parole violators shall have the following rights to accommodations and effective communication during Revocation and Revocation Extension proceedings to ensure meaningful participation:

- (1) To receive accommodation for disabilities and effective communication assistance throughout the Revocation or Revocation Extension process.
- (2) To receive help talking, reading, hearing, seeing, understanding or getting to hearings.
- (3) To receive help in meeting with counsel.
- (4) To receive the assistance of a foreign language interpreter if the parolee/parole violator does not speak English.
- (5) To receive the assistance of a sign language interpreter if the parolee/parole violator is deaf and uses sign language.
- (6) To receive help reading all related forms and papers.
- (7) To use special transportation if needed to attend hearings.
- (8) To file a grievance or appeal if the parolee/parole violator did not receive the help he or she needed.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1714, 1719, and 1767.35, Welfare and Institutions Code.

§ 4977.7 Remedies for Late Hearings in the Parole Revocation Process

(a) Any reduction for timeframe violations that a youth is entitled to as explained below shall not affect the hearing officer's determination of the appropriate case disposition.

(b) Late Probable Cause Hearing Remedy

- (1) If the Probable Cause Hearing for an in-custody parolee occurs after the 13th business day but before the 35th calendar day following placement of the parole hold without a showing of good cause, the remedy shall be a hearing to be held at the earliest possible date.
- (2) If the Probable Cause Hearing for an in-custody parolee occurs after the 35th calendar day following placement of the parole hold without a showing of good cause, the Parolee shall be entitled to a reduction in his/her return to custody by one day for every day the Probable Cause Hearing occurs beyond the 35th calendar day.

c. Late Revocation Hearing Remedy

- (1) If the Revocation Hearing for an in-custody parolee occurs after the 35th calendar day following placement of the parole hold without a showing of good cause, the parolee shall be entitled to a reduction in his/her return to custody by one day for every day the Revocation Hearing is late.
- (2) If the Revocation Hearing for an in-custody parolee occurs after 90 calendar days following the placement of a parole hold without a showing of good cause, prejudice shall be presumed, the case shall be dismissed, the Division's hold must be withdrawn and, assuming no other holds, the parolee released as soon as possible but no later than three (3) business days from the 91st day.

d. Late Not-In-Custody Revocation Hearing Remedy

- (1) If the Not-In-Custody Revocation Hearing occurs after the 60th calendar day following service to the parolee of the notice of charges without a showing of good cause, the remedy shall be a hearing unless the parolee can demonstrate actual prejudice as a result of the delay.

e. Late Revocation Extension Hearing Remedy

- (1) If the Revocation Extension Hearing occurs after the 35th calendar day following service to the parolee of the notice of charges with or without a showing of good cause, the hearing shall be held at the earliest possible date.
- (2) For parole violators held beyond their Revocation Release Date (RRD) due to pending revocation extension charges, if the Revocation Extension Hearing occurs after the 35th calendar day following the notice of charges without a showing of good cause, the Parole Violator shall be entitled to a reduction in his/her extension by one day for every day the Revocation Extension Hearing is late.
- (3) For Parole Violators held beyond their RRD, if the Revocation Extension Hearing does not occur within 90 calendar days following the notice of charges without a showing of good cause, prejudice shall be presumed, the case shall be dismissed, an Exit Interview shall be conducted, the Division's hold must be withdrawn and, assuming no other holds, the Parole Violator released as soon as possible but no later than three (3) business days from the 91st day.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1719 and 1723, Welfare and Institutions Code.

~~Note: Authority cited: Section 1722, Welfare and Institutions Code. Reference: Sections 1714, 1719, 1721, 1723 and 1766, Welfare and Institutions Code.~~

§ 4978. Detention.

- (a) Criteria for Detention. A parolee ~~shall~~ may be detained when it is determined it is more likely than not there is a substantial risk that unless he/she is detained he/she will be:

- (1) ~~An immediate and significant~~ a danger to the person or property of another.
- (2) ~~An immediate and significant~~ a danger to himself/herself.
- (3) ~~In immediate danger of leaving the jurisdiction of the Youth Authority a risk to abscond from parole supervision~~

(b) Authority to Detain.

- (1) The Board may detain a parolee upon a determination that a criterion for when detention criteria has been met and that probable cause exists ~~it determines there is probable cause~~ to believe a parolee has violated a condition of parole ~~or when a violation of parole has been established.~~

(c) Time Limits on Detention Prior to Board Hearing.

(1) No later than two (2) business days after the parole hold is placed, the Parole Agent and the Supervising Parole Agent will confer to determine (i) whether there is probable cause to believe that the parolee violated a condition of parole, and (ii) whether the parolee meets any of the detention criteria and should be detained pending a formal Probable Cause Hearing.

~~(1)-(2) A parolee has a right to a hearing before the Board within 60 days of Youth Authority initiated detention.~~ A parolee who is in custody and has been charged with a parole violation has a right to a Probable Cause Hearing before the Board within thirteen (13) business days of a DJJ-initiated parole hold to determine:

(A) ~~To determine whether he/she has violated a condition of parole~~ whether there is probable cause to believe that he/she has violated a condition of parole, and

(B) ~~To determine whether there is probable cause to believe he/she has violated parole when court action is pending~~ whether he/she should remain in custody pending the outcome of the revocation proceedings.

~~(2)-(3) When hearings occur more than 60 days after a Youth Authority initiated detention, a written justification shall be presented to the hearing officer. The justification shall document the reasons for the delay and may be distributed to the parolee, his/her attorney, the parole agent and the board hearing coordinator. If the Board finds that a criterion for detention has not been met, or that there is no probable cause to believe that a parolee violated a condition of parole, the Division's hold must be withdrawn and, assuming no other holds, the parolee released as soon as possible, but no later than three (3) business days from the date of the hearing.~~

~~(3) The hearing officer may determine a delay has resulted in substantial prejudice to the parolee. Substantial prejudice is a handicap suffered by the parolee and caused by a delay which could reasonably influence the outcome of the hearing.~~

~~(A) A hearing officer will use the preponderance standard of proof in determining the existence of substantial prejudice.~~

~~(B) A hearing officer must be convinced beyond a reasonable doubt that the parolee has not been prejudiced when the violation or probable cause hearing has been delayed for two months or longer.~~

~~(C) When a hearing officer determines there is substantial prejudice he/she shall either dismiss all actions before him/her or those allegations wherein substantial prejudice is found.~~

(d) Changes to Conditions Supporting Detention

(1) A parole agent shall ensure that a detained parolee may communicate with him/her at any reasonable time when the parolee has new information which might possibly change a detention decision.

(2) When a hearing officer has ordered a parolee detained, release from detention requires approval by a Member or Board Representative. Parole staff shall contact the hearing officer making the original order, or in his/her absence, another Member or Board Representative when new information indicates detention is no longer required. The hearing officer may give verbal approval for withdrawal of the detention order with the stipulation that a written report will be presented at a non-appearance parole calendar explaining the action.

(3) When court action is extended and the parolee is detained, ~~by the Youth AuthorityDJJ~~ may consider placing the parolee in a ~~Youth AuthorityDJJ~~ institution. This may occur when it is deemed to be in the best interests of the parolee, and provided~~ed~~ it does not interfere with the court process.

~~(ge)~~ Parolees undergoing court action in other states and/or being held by the ~~Youth AuthorityDJJ~~ in other states, will be ~~handled-processed~~ in the same manner as other parolees in the violation process except as follows:

(1) Detention of parolees in other states by the ~~Youth AuthorityDJJ~~ will be reported to the Board at a parole calendar within sixty (60)-days of such detention.

(2) ~~Revocation process Time-time~~ limits ~~for hearings~~ for parolees being detained out of state will be suspended until the date the parolee is returned to California.

Note: Authority cited: Sections ~~1721, 1722 and~~ 1767.3, 1767.6 Welfare and Institutions Code. Reference: Section 1766, 1719, 1766, 1767.35 Welfare and Institutions Code.

§ 4979. Right to Legal Counsel.

~~A parolee who is to appear before the Board for a probable cause/detention, violation, or disposition hearing, shall have the right to request the assistance of an attorney. The parolee may waive this right when such waiver is voluntary, and made knowingly, and intelligently. When the parolee is under 14 years of age, such waiver requires parental consent. Legal counsel representing wards at hearings shall be attorneys who have been admitted to the practice of law by the State of California. The granting of counsel is conditional and subject to criteria established by the Board.~~

~~(a) Timely Request for Counsel. A parolee shall make his/her request for counsel when the Board hearing coordinator advises him/her of his/her rights to due process while undergoing violation action. A request for counsel subsequent to that time will be considered only if it is determined that the parolee did not receive the opportunity or was unable to understand and/or exercise his/her right to request counsel.~~

~~(b) Criteria for Counsel. Any one of the criteria enumerated herein may be sufficient in and of itself to grant counsel for a parolee. A parolee who meets the criteria set forth below in subsections (1), (2), or (3) shall be granted counsel. If the criteria for subsection (4) are met in conjunction with that described in either subsection (5) or subsection (6) the right to counsel shall be granted. The criteria are:~~

~~(1) The parolee is under 14 years of age.~~

~~(2) The parolee is incapable of speaking for himself/herself by virtue of a severe mental disorder or other grave mental disability.~~

~~(3) Confidential testimony has been taken or will be taken at the hearing.~~

~~(4) The parolee is incapable of speaking for himself/herself by virtue of:~~

~~(A) The complexity of the issues to be considered at the hearing.~~

~~(B) Personal limitations based on the parolee's age, education, intelligence, ability to read and speak English and verbal ability.~~

~~(5) The parolee makes a colorable denial of the alleged violation of parole. Colorable is defined as seemingly valid or genuine, plausible, or having an appearance of being true or right. It is not necessary for the parolee to convince the Youthful Offender Parole Board he/she did not commit the violation. All that is required is a minimal establishment of a possibility that the denial is genuine.~~

~~(6) There are substantial mitigating circumstances in connection with the alleged violations of parole. The reasons which justify or mitigate the alleged violation must be plausible and of real worth, not imaginary or illusive. The circumstances must also be such that revocation of parole would be inappropriate or be so complex as to be difficult for a parolee to present at a hearing.~~

~~(c) Determination of Need for Counsel. The Board has final responsibility for determining the need for counsel for a parolee at a hearing.~~

~~(1) When counsel has previously been denied and the hearing officer determines the ward needs counsel, he/she shall set forth on a Board order his/her reason.~~

~~(2) When counsel is granted the parolee may pay for an attorney of his/her own choosing, except that when a parolee is unable because of indigency to retain his/her own attorney, the Youth Authority will provide counsel.~~

The Juvenile Parole Board shall appoint counsel to represent all Juvenile Parolees and Parole Violators in the Revocation and Revocation Extension processes.

(a) Appointment of Attorneys

1. For Revocation proceedings, the Division of Juvenile Parole Operations (DJPO) shall notify a Juvenile Parolee's counsel of record or public defender, who represented him/her for the committing court offense, of the imposition of a parole hold within four (4) business days after the hold.
2. An attorney will be appointed to represent a parolee/parole violator:
 - a. On or before the eighth (8th) business day following the parole hold for detained/in-custody parole Revocation proceedings.
 - b. On or before the 21st business day following service of the Notice of Charges for Not-in-Custody (NIC) parole Revocation proceedings, or
 - c. On or before the eighth (8th) business day from the date of notice to the Parole Violator for Revocation Extension proceedings.
3. A parolee/parole violator shall have the right to be represented by counsel during the administrative appeal of the JPB's revocation or revocation extension decision.
4. A parolee/parole violator shall have the right to obtain counsel of his or her own choosing at his or her own cost. Such counsel shall have the same rights, except as to compensation, as to counsel appointed by the JPB.

(b) Attorney Access

1. At the time of appointment, counsel shall be provided with all of the evidence in the State's possession on which it intends to rely or which may be exculpatory.
2. A parolee/parole violator's counsel shall not be denied reasonable access to all of his/her client's files.
3. At the time of appointment, counsel representing parolee/parole violator who have difficulty in communicating or participating in Revocation or Revocation Extension proceedings because of a disability or effective communication needs, shall be informed of the nature of the difficulty, including but not limited to mental illness, other cognitive or communication impairments, illiteracy, limited-English language proficiency, and the need for a foreign language or sign language interpreter.
4. Counsel shall be given reasonably adequate time to represent the parolee/parole violator properly at each stage of the proceeding, including administrative appeals.

Note: Authority cited: Section ~~1722~~ and 1766, Welfare and Institutions Code. Reference: Sections 1767.35, 1714 and 1719, Welfare and Institutions Code.

§-4980. Hearings.

- a. Probable Cause Hearings – A hearing in which the Juvenile Parolee appears and at which it is determined whether there is probable cause to believe that the Juvenile Parolee has violated a condition of parole and, if so, whether he/she should be detained during the revocation process.

- b. Expedited Probable Cause Hearing - The JPB shall provide an expedited Probable Cause Hearing within ten (10) business days following the parole hold upon a sufficient offer of proof by a parolee's attorney that there is a complete defense to all parole violation charges that are the basis of the parole hold. Such requests may be made by a parolee's attorney at any time. The JPB shall respond to such requests no later than one (1) business day after receiving such request but shall make every effort to respond the same day. If the request is denied, the basis for denial shall be stated in writing.
- c. Revocation Hearings – A two-phase hearing (evidentiary and disposition) at which it is determined whether the preponderance of the evidence shows that the parolee violated a condition of parole and whether the parolee should be returned to parole supervision or remanded to custody.
- d. Revocation Extension Probable Cause Hearing- A hearing in which a parole violator appears and it is determined whether there is probable cause to believe that the parole violator committed either Serious In-Custody Misconduct or Willful Program Failure.
- e. Revocation Extension Hearings – The two-phase hearing (evidentiary and disposition) in which a parole violator appears before the JPB, at which it is determined whether the preponderance of the evidence shows that the parole violator committed Willful Program Failure or Serious In-Custody Misconduct, and in which a parole violator's revocation period may be extended.
- f. The Revocation and Revocation Extension Hearing shall be audio recorded and a written record will be made for the proceeding.
- g. The Revocation and Revocation Extension Hearing shall be audio recorded and a written record will be made for the proceeding.

Note: Authority cited: Section 1766, Welfare and Institutions Code. Reference: Sections 1714, 1719, and 1767.35, Welfare and Institutions Code.

§4980.5 Rules for Parole Violation Hearings

The Board has established the following rules for all hearings relating to parole violation proceedings.

- (a) When appropriate the Board may conduct more than one type of hearing in the violation series on the same date.
- (b) When a parolee is being held in custody, the ~~Hearings~~ hearings to determine probable cause or violation of parole shall be held within the county or within fifty ~~60-50~~ miles of where the alleged violation occurred, absent a waiver.

(c) The parolee shall be present during the hearing. If the parolee is under ~~18-14~~ years of age, the parents or guardians shall be notified and may attend the hearing. ~~When counsel is granted, he/she may be present at the hearing.~~

(d) The hearing officer shall familiarize himself/herself with necessary reports and supporting evidence prior to the hearing. This review will be limited to those materials relevant to the type of hearing to be conducted.

(e) The parolee may challenge any allegation of a violation brought exclusively by the ~~Youth Authority~~ DJJ but cannot challenge a court finding of probable cause or a violation of law conviction.

(f) The hearing officer shall limit the scope of the hearing to issues relevant to the particular hearing which is being held.

(g) For Probable Cause Hearings ~~The the~~ hearing officer may assume staff reports are true unless the accuracy of the information is successfully challenged at the hearing.

~~(1) Witnesses shall be encouraged to attend the hearing to provide direct testimony even though not requested for cross-examination purposes.~~

~~(2) When possible, parolee shall be advised of witnesses' attendance and scope of witnesses' testimony.~~

~~(h) The hearing officer shall use discretion in screening witnesses. Any witness whose testimony would not be relative to the issues at hand may be excluded. The hearing officer will document the reasons why a witness is excluded.~~

~~(i) The hearing officer shall determine the order of presentation of evidence and the order in which witnesses are called.~~

~~(j) A witness may be excused from appearing at the hearing if the hearing officer has good cause to believe such witness would be subject to risk of harm if he/she testified at the hearing. The hearing officer in such an instance shall take testimony from the witness without the presence of the parolee. The parolee shall be informed of the substance of the evidence received to the extent that the identity of the witness is protected. The summary of the hearing shall indicate that confidential testimony was relied upon in reaching the decision.~~

~~(k) The rules of evidence applicable in a court proceeding do not apply to parole violation proceedings. Hearsay evidence, illegally seized contraband or information obtained without proper warning to the parolee with respect to self-incrimination may be considered by the hearing officer. Prior delinquent or criminal conduct may be introduced into evidence when the evidence is relevant to prove some facts, such as motive, opportunity, intent, preparation, plan, knowledge, or identity or absence of mistake or accident, or, where the evidence affects the credibility of a witness. The hearing officer shall, however, weigh the reliability of any evidence presented. Direct and verified~~

~~evidence shall be given the greatest weight in deciding the issues in a particular case.~~

~~(l) Any person, including the parolee, who disrupts a hearing may be excluded from further participation by the hearing officer.~~

~~(m) The hearing officer is responsible for assuring that the parolee has had a full opportunity to present all relevant information in his/her own behalf.~~

~~(n) The hearing officer shall record findings of specific violations with respect to the allegations shown in the written notice. He/she shall record all orders made at the hearing.~~

(h) Parolees shall have the right to subpoena witnesses to appear at a Revocation Hearing. The parolee shall be advised of the witnesses that the DJJ intends to subpoena. If a hearing officer determines based on objective factors that a witness is fearful and that face-to-face confrontation would result in significant emotional distress to the witness that witness may testify outside of the presence of the parolee. The hearing officer shall allow the parolee's counsel to cross examine the witness and a reasonable amount of time to consult with the parolee about the witness's testimony.

(i) Evidence or documents not provided to the Juvenile Parolee's counsel at least 48 hours prior to the hearing shall not be admitted or considered in the hearing unless DJJ can show good cause for the delay.

(j) The use of hearsay evidence in a Revocation Hearing shall be limited by the Juvenile Parolee's confrontation rights in the manner set forth in controlling legal authority.

(k) Any person, including the parolee, who disrupts a hearing may be excluded from further participation by the hearing officer.

(l) The hearing officer is responsible for assuring that the parolee has had a full opportunity to present all relevant information in his/her own behalf.

(m) The hearing officer shall record findings of specific violations with respect to the charges shown in the notice of charges. He/she shall record all orders made at the hearing.

(n) At every parole revocation proceeding, the parolee shall be informed of his/her right to receive an audible copy of the audio recording of the hearing. DJJ shall take necessary steps to ensure that such proceedings are appropriately recorded. Probable Cause Hearings may not be recorded.

Note: Authority cited: Section ~~1722~~1766, Welfare and Institutions Code. Reference: Sections ~~1724~~ and 1723, Welfare and Institutions Code.

§-4981. Probable Cause/Detention Hearing.

~~A parolee undergoing court action has a right to a hearing before the Board when he has been detained by Youth Authority action. This hearing shall first be for the purpose of determining whether there is probable cause to believe he has substantially violated a law and thus a condition of parole. Probable cause requires a reasonable belief, based on reliable evidence, that a person has violated a law. The evidence must substantiate more than mere suspicion but need not amount to proof of guilt. Where probable cause is established the Board then determines whether or not detention should be continued.~~

(a) A parolee who is in custody while undergoing parole revocation action initiated by DJJ has a right to a Probable Cause Hearing before the JPB. This hearing shall be conducted no later than thirteen (13) business days after imposition of a DJJ parole hold. The Probable Cause Hearing has two purposes:

(1) To determine whether there is probable cause to believe the parolee has violated a law or condition of parole. Probable cause requires facts that would lead a person of ordinary caution and prudence to conscientiously entertain a strong suspicion that the alleged charge is true.

(2) To determine, where probable cause is established the Board, whether the parolee should continue to be detained pending resolution of the alleged charges.

~~(a)(b)~~ Probable cause for a law violation may be established in the case of a parolee by:

(1) A finding by a court that a crime was committed and that there is probable cause to believe the parolee committed the crime. In this instance the hearing officer shall establish probable cause by determining the parolee appearing before him is the same subject who appeared before the court.

(2) A finding by the hearing officer that a violation of law occurred and that there is probable cause to believe the parolee was the person who committed the crime.

~~(b)(c)~~ A hearing officer may order a parolee detained following the establishment of probable cause provided the parolee meets the criteria for detention as set forth in Section 4978.-

~~(e)(d)~~ When a hearing officer finds probable cause but orders that a parolee not be detained pending resolution of the charges, the Youth Authority Division's detention order shall be removedhold must be withdrawn and assuming no other holds, the parolee released as soon as possible, but no later than within 24 hoursthree (3) business days from the date of the hearing. If released, the parolee will have a Not-In-Custody Revocation Hearing. Regardless of whether the parolee is being held on other holds, timeframes for Not-In-Custody Revocation Hearings will apply.

(d) A parolee may waive a timely probable cause/detention hearing provided such waiver is voluntary, and made knowingly and intelligently. A waiver of such a hearing shall in general meet the same test as a waiver of the right to request legal counsel. A waiver signed by the parolee shall be presented to the Board along with appropriate violation and detention reports prepared by parole staff. The Board may on a non-appearance basis, establish probable cause and order detention when appropriate

~~criteria are met. A waiver of a timely hearing shall not be considered an admission of the truth of the charges pending in court.~~

~~(e) When a hearing officer dismisses the charges or orders that the parolee be continued on parole, the Division's hold must be withdrawn and, assuming no other holds, the parolee released as soon as possible, but no later than three (3) business days from the date of the hearing.~~

~~(e) When at a scheduled probable cause hearing it is discovered court action has been completed the hearing officer may conduct a disposition hearing provided:~~

~~(1) Parole staff is recommending to continue the ward on parole.~~

~~(2) The parolee waives notice of the disposition hearing and service of a written disposition report.~~

Note: Authority cited: Section ~~1722~~1719, Welfare and Institutions Code. Reference: Sections ~~171~~, 1719, ~~1721-1766~~ and 1723, Welfare and Institutions Code.

§ 4982. Violation of Parole

~~The Board shall establish that there has been a substantial violation of a condition of parole before a parolee may be deprived of his liberty through revocation of parole.~~

~~(a) Kinds of Violations of Parole:~~

~~(1) Law violation. A court finding of a violation of law establishes a violation of a condition of parole.~~

~~(2) Technical violation. This is a violation of a general or special condition of parole as imposed by the Board. It takes specific Board action to establish a technical violation of parole except when the parolee has made a voluntary admission of such violation.~~

~~(b) Reporting Possible Parole Violations to the Board. Parole staff shall report to the Board when:~~

~~(1) A court has established that a parolee has committed a substantial law violation.~~

~~(2) Parole staff believes a parolee has committed a substantial violation of a general or special condition of parole.~~

~~(A) Parole staff may allege a technical violation of parole when there has been a dismissal or acquittal by court action. This may occur when parole staff believes the behavior charged in the court action represented a substantial violation of parole and it is believed there is sufficient proof to establish the truth of such a violation.~~

~~(c) Options Available to a Parolee: A parolee charged by parole staff with a violation of parole may:~~

~~(1) Waive his right to a timely hearing on alleged technical violations of parole when he has court action pending on a law violation. However, a violation hearing shall be~~

~~conducted within 72 days of the waiver when court action has not been completed. Any waiver of a timely hearing shall not be considered an admission of the truth of the alleged violation.~~

~~(2) Sign an admission as to the truth of any alleged violation of parole.~~

~~(3) Demand a hearing before the Board to determine the truth of any alleged violation of parole.~~

~~(d) Standard of Proof. A preponderance standard of proof shall be applied by the Board to the fact finding process of determining whether a parolee has violated a condition of parole. This means a hearing officer shall decide whether it is more likely than not that a parolee did violate a condition of parole as alleged.~~

~~(e) Non-substantial Violations of Parole. Parole staff shall report a non-substantial violation of law established by a court to the Board within 15 days of a completed court action. A parole report briefly describing the parolee's behavior and giving the court disposition is to be presented to the Board at a parole calendar.~~

~~(f) Minor Violations of Law and Citations. Vehicle Code traffic violations and citations for possession of marijuana need not be reported to the Board, including when a warrant is issued, except for:~~

~~(1) Hit and run.~~

~~(2) Injury to person or property.~~

~~(3) Driving under the influence of alcohol or drugs.~~

~~(4) Two or more citations for possession of marijuana within a six-month period.~~

~~(5) Two or more traffic warrants within a six-month period.~~

(a) When a parolee is alleged to have violated a condition of parole, he/she is placed into the violation process. There are two categories of parole violations:

(1) Law violation. A court finding of a violation of law establishes a violation of a condition of parole.

(2) Technical violation. This is a violation of a general or special condition of parole.

(b) The Division of Juvenile Parole Operations (DJPO) violation process has three (3) levels:

1. Level 1: minor violations of parole for which detention may not be warranted.

2. Level 2: selected minor law violations, moderate technical violations, or repetitive Level 1 behavior for which detention may not be warranted.

3. Level 3: Any behavior that the DJPO believes represents a risk or threat to public safety. This includes serious technical and/or law violations, and/or any Level 1 or Level 2 behavior which the parole agent and unit supervisor deem serious or reportable.

(c) Level 1 and Level 2 behavior may be resolved at the field parole unit level through the imposition of a Corrective Action Plan (CAP). Level 3 Behavior shall be reported to the JPB. However, the JPB must first establish that there has been a violation of a condition of parole before a Parolee may be deprived of his liberty through revocation of parole.

(d) A preponderance of the evidence standard of proof shall be applied by the JPB during a Revocation Hearing to determine whether a parolee has violated a condition of parole. This means a hearing officer shall decide whether it is more likely than not that a parolee did violate a condition of parole as alleged.

Note: Authority cited: Section ~~4722~~1766, Welfare and Institutions Code. Reference: Sections ~~4721~~, 1723, ~~4766-1719~~ and 1767.3, Welfare and Institutions Code.

§ 4983 - Disposition of a Parole Violation.

~~The Board shall make a disposition in all cases where a substantial violation of parole by a parolee has been established.~~

~~(a) Time Limits and Board Actions.~~

~~1) Disposition Review. This review is conducted by the Board on a non-appearance basis at a parole calendar. It shall be held at the earliest opportunity following establishment of a parole violation when the parolee is not in custody or when the Youth Authority detention order has not been withdrawn, and parole staff is recommending that the ward be continued on parole. At this review the Board may order that the ward be continued on parole or order the scheduling of a disposition hearing. If the hearing officer believes the parolee meets the criteria for detention, he may order him detained pending a disposition hearing.~~

~~(2) Disposition Hearing. A disposition hearing shall be held for a parolee when the parole agent is recommending revocation of parole, or when the Board at a review orders a hearing. A disposition hearing may not be waived by a parolee.~~

~~(A) A disposition hearing shall be held within 30 days of:~~

~~1. The date of final court action on all matters before the court.~~

~~2. The date the Youth Authority established a technical violation of parole if no court action is pending.~~

~~(B) At a disposition hearing the hearing officer may:~~

~~1. Continue the ward on parole when he believes it is in the best interests of the community and to the advantage of the parolee.~~

~~2. When a parolee is in detention and continued on parole he shall be released from the Youth Authority detainer within 24 hours. If a new placement plan is required the hearing officer shall order the parolee detained temporarily and to be released when an acceptable plan is developed. In making such an order the hearing officer shall set a specific time the case is to be returned to Board if release is not effected.~~

~~3. Revoke the parole of a parolee when he determines the parolee is in need of institutional training and treatment.~~

~~(b) Revocation of Parole:~~

~~(1) In ordering revocation of parole at a disposition hearing the hearing officer shall:~~

~~(A) Establish a parole consideration date or order a new clinical study for the parolee.~~

~~(B) Designate the place where the new institutional stay will begin.~~

~~(2) When a parolee has been committed to the Youth Authority by a court as a result of an offense committed while on parole, the parole status of such a parolee shall be revoked at the initial hearing.~~

(a) The Board shall make a written order documenting its findings and imposing a disposition in all parole Revocation Hearings. A copy of this written board order shall be provided to the parolee and to his/her attorney at the conclusion of the hearing.

(b) The dispositions that the Board may consider are:

1. Dismissal of the charges is warranted
2. Continuing the parolee on parole under specific and extraordinary circumstances.
3. Revoking parole and imposing a revocation term based upon the matrix established by the Board. Upon revocation, the hearing officer shall establish a Revocation Release Date (RRD).
4. Granting the parolee's request for an Optional Waiver.

Note: Authority cited: Section 1719, Welfare and Institutions Code. Reference: Sections 1714, 1723 and 1766, Welfare and Institutions Code.

§4983.5 Optional Waiver

(a) A parolee, who is in custody and undergoing criminal prosecution for the same behavior that is grounds for an alleged violation, may conditionally waive a Revocation or Revocation Extension Hearing while still retaining the option to request a hearing at a later date. Upon receipt of a signed request by the parolee in which he/she elects to optionally waive his/her Revocation or Revocation Extension Hearing, his/her parole will be revoked or extended for the time assessed by the Board based upon the established matrix.

(b) A parolee may later request a Revocation or ~~/~~Revocation Extension Hearing prior to the end of the optional waiver period. He/she is entitled to no-more-than-one activation of an optional waiver. A hearing request must be postmarked and received by the JPB within fifteen (15) business days following sentencing or final disposition at the trial court level in the criminal proceedings, and no later than 35 days before expiration of the optional waiver revocation period ordered by the JPB.

(c) If a parolee is still undergoing criminal prosecution when the optional waiver revocation period ends, the DJJ parole hold will be dropped. However, the parolee may remain in local custody pending the outcome of the criminal prosecution.

Note: Authority cited: Section ~~1722~~1719, Welfare and Institutions Code. Reference: Sections 1714, ~~1719~~, ~~1721~~, 1723 and 1766, Welfare and Institutions Code.